

**CHAPTER NO. 344**

**SENATE BILL NO. 1646**

**By Norris, Mr. Speaker Wilder, Burks**

**Substituted for: House Bill No. 1376**

**By Pinion, Hood, Coleman, Fowlkes, McDonald**

AN ACT to amend Tennessee Code Annotated, Section 12-8-101, relative to the sale and production of stone products and hot mix asphalt by governmental entities.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 12-8-101, is amended by deleting such section in its entirety and by substituting instead the following:

Section 12-8-101. (a) Notwithstanding any other provision of law to the contrary, local governments may, individually or jointly, own or operate a facility for the manufacture or production of hot mix asphalt in accordance with the restrictions and limitations provided for in this section.

(b) A local government desiring to own or operate a hot mix asphalt facility shall prepare a financial feasibility study, hereafter referred to as "study", that analyzes all appropriate costs and benefits, related to the operation of the plant.

(1) The study required by this section shall be prepared in compliance with generally accepted governmental accounting and financial reporting standards and shall include the following:

(A) Accurate production cost estimates, including debt service and depreciation on the asphalt plant and necessary ancillary equipment and all other fixed and variable plant operating costs including, but not limited to, capital cost of equipment and installation, land acquisition, personnel costs, employer fixed costs, materials, transportation, utility costs and all costs associated with environmental and safety compliance standards. This report shall be completed in general compliance with the comptroller's of the treasury asphalt production cost models;

(B) An estimate of the potential cost savings in materials and transportation and operational costs that may be realized by the local government operating the proposed facility, including a record of competitive bids, F.O.B. at plant, for asphalt that the local government or governments have received in recent years, including the current year, and an examination of bids received by comparable local governments;

(C) An estimated need for paving or hot mix asphalt for fifteen (15) years that demonstrates that the local government or governments would produce the volume necessary to realize a cost savings by owning or operating an asphalt facility;

(D) Offers from suppliers of the necessary raw materials showing that those suppliers will sell materials to the local government or governments at competitive prices, and the locations of those suppliers; and

(E) Estimates of whether the operation of a facility by the local government would have a significant impact on the local economy and state and local tax revenues, including sales and use tax, local option sales tax, mineral severance tax, business tax, real and personal property tax.

(c) Whenever a local government proposes to own or operate a hot mix asphalt facility pursuant to this section and develops the feasibility study required by subsection (b), such study shall be submitted for review to a financial feasibility oversight committee, hereafter referred to as the "committee". The committee shall consist of three (3) members. One (1) member shall be selected by the Tennessee Road Builders Association; one (1) member shall be selected by the Tennessee County Highway Officials Association; and one (1) member shall be selected by the comptroller of the treasury. Any and all expenses relating to the committee shall be solely and equally shared by the Tennessee Road Builders Association and the Tennessee County Highway Officials Association.

(1) Once a feasibility study has been prepared by a local government, a copy of such study shall be delivered to the comptroller of the treasury and a copy shall be provided to the mayor or chief executive officer of the local government to be made available to the public for inspection and review. Within fifteen (15) days of receiving the study, the comptroller shall notify the Tennessee Road Builders Association and the Tennessee County Highway Officials Association of the need for a committee to be appointed and shall name his or her appointee to the committee. Within fifteen (15) days of receiving notice from the comptroller, the Tennessee Road Builders Association and the Tennessee County Highway Officials Association shall name their appointees to the committee. Committee members shall receive a copy of the committee report immediately upon designation of membership. Within thirty (30) days of the appointment of the committee, the mayor or chief executive officer of the local government desiring to own or operate a hot mix asphalt facility shall establish a meeting date for the committee. Not less than ten (10) days prior to the meeting the local government shall provide public notice of the date, time and location of the meeting in a newspaper of general circulation in the government where the facility is proposed. The meetings of the committee shall be open to the public and all records of the committee shall likewise be open to public inspection. The member of the committee appointed by the comptroller shall serve as chair of the committee and conduct the meetings of the committee.

(2) The sole function of the financial feasibility oversight committee shall be to review the feasibility study to determine that all appropriate ordinary and necessary capital and operational costs for a local government to own and operate a hot mix asphalt manufacturing facility have been included in the study and have been publicly disclosed.

(3) Once the review has been completed, the feasibility oversight committee shall either:

(A) Approve the study if, in the determination of the committee, it includes all significant costs and accurately estimates the costs and benefits of owning and operating a facility; or

(B) Disapprove the study if, in the determination of the committee, it is incomplete and lacks substantial information to provide an accurate estimate of the costs and benefits of owning or operating a plant.

(4) If the committee determines that the feasibility study is incomplete, it shall indicate in writing those items which the study lacks and shall return the study to the submitting entity for modification and re-submission. If, after a second re-submission, a majority of the committee still determines that the study is incomplete, the study shall then be forwarded to the governing body of the submitting entity with a negative recommendation from the committee and shall include written comments indicating those areas where the study is insufficient.

(5) The determination of the committee shall be forwarded to the governing body of the government or governments desiring to own or operate the facility within thirty (30) days after it meets to review the study.

(6) If the membership of the feasibility oversight committee does not unanimously agree as to whether the study is sufficient, the committee shall forward two (2) written reports to the local governing body, stating the majority and minority positions of the committee and indicating the reasons why the members of the committee approve or disapprove of the study.

(d) After receiving the report of the financial feasibility oversight committee the governing body shall examine the feasibility study, all supporting documentation and the determination and written comments of the oversight committee and shall approve or deny any action to acquire an asphalt facility in a resolution or ordinance passed by a two-thirds vote of the governing body before the local government expends any public funds for the purpose of acquiring a hot mix asphalt facility.

(e) For the purpose of this section, the term "local government" is defined to include any county or incorporated municipality. Two (2) or more local governments may own and/or operate a plant jointly. For jointly owned or operated plants, all local governments desiring to participate in the operation of the plant must be a part of the initial feasibility study for the plant.

(f) Any unit of local government owning or operating a facility for the manufacture or production of hot mix asphalt shall comply with the provisions of any state rule, regulation or standard for the quality of asphalt used in the construction of roads, streets or highways.

(g) Nothing in this section shall be considered a limitation or prohibition on the state or any political subdivision, including counties and municipalities, from expanding, replacing, altering or continuing any plant or facility for the manufacture or production of hot mix asphalt in existence on March 29, 1976. This section shall not apply to a metropolitan government and nothing in this section shall be construed as limiting the authority of a metropolitan government to own or operate a plant or facility for the production or manufacture of hot mix asphalt.

(h) For any local government owning or operating a plant or facility for the production or manufacture of asphalt pursuant to the authority granted by this section, the comptroller of the treasury, or a private auditor or firm approved by the comptroller, shall conduct an annual audit of such facility regularly on a time interval to be determined by the comptroller.

(i) Asphalt produced in a plant operated by any local government pursuant to the authority granted in this section shall be used exclusively for paving of public streets, roads or highways under the discretion and control of that unit of local government. Each unit of local government operating a plant pursuant to the authority granted in this act shall keep a detailed inventory and record, which complies with generally acceptable governmental accounting standards, of where all asphalt products produced by the plant are used.


(j) A local government that owns or operates an asphalt facility shall be required to solicit bids annually for hot mix asphalt products. In advertising for bids, the local government shall explicitly reserve the right to reject any and all bids. The local government shall have the undisputed authority to reject all bids and continue to utilize its own asphalt facility for all or a portion of its asphalt needs. The requirements of this subsection shall not apply to any local government that owns or operates an asphalt facility upon the effective date of this act.

(k) A local government, which does not own or operate an aggregate production facility such as a quarry or other facility for the production of crushed limestone, commercial lime, agricultural lime, sand, gravel, or any other product resulting from the processing of aggregate upon the effective date of this act shall be prohibited from acquiring such facility unless the local government prepares a financial feasibility study comparable to the one required in subsection (b) for asphalt facilities, and submits the study for review to the oversight committee established in subsection (c). The procedures for review and approval of the study shall be substantially the same as that for asphalt facilities and all other costs that are specific to an aggregate production facility. The acquisition of such facility shall also require the passage of a resolution or ordinance by a two-thirds vote of the governing body of the local government. The aggregate production facility owned or operated by a local government may transfer aggregate only to an entity of that local government provided the governing body of the local government that operates the facility first conducts a study to determine the actual costs of producing the materials and requires reimbursement of actual costs to the unit of local government operating the aggregate production facility.

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it.

**PASSED: May 19, 2005**

  
JOHN S. WILDER  
SPEAKER OF THE SENATE

  
JIMMY NAIFEH, SPEAKER  
HOUSE OF REPRESENTATIVES

**APPROVED this 7<sup>th</sup> day of June 2005**

  
PHIL BREDESEN, GOVERNOR